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March 5, 1999

**VIA FACSIMILE & U.S. MAIL**

Connie Puchalski  
U.S. EPA Region 5  
77 West Jackson Blvd.  
Chicago IL 60604

Re: United States of America v. City of Albion et al.

Dear Ms Puchalski:

I write to (1) express our concern over the recent action, or more accurately inaction, of the City of Albion with respect to the proposed Consent Decree; (2) confirm that Cooper and Corning intend to hold up their end of the deal as set forth in the proposed Consent Decree and (3) request an assurance of swift and appropriate action if the City of Albion and/or Decker do not promptly sign the proposed Consent Decree on or before March 15, 1999.

On the first point, it is now obvious that we will not have the Consent Decree signed by March 15, the date Cooper and Corning must start taking action to meet the RA Settling Defendants' Construction Schedule. It is troubling that the City of Albion continues to move at a snail's pace, stalling the process, refusing to take action and vote on the agreement that was reached in principle back in September 1998. Even now, the City of Albion in its March 2 facsimile continues to nitpick the Consent Decree. Indeed, that correspondence suggests that the City may have "additional comments" after they meet and warns that the interest provision "remains controversial." This is not acceptable at this late date.

From the beginning of this process the EPA has been married to the notion of a fixed construction schedule. Cooper and Corning have been willing to go along with the EPA's wish in this regard, but have always made it clear that they will not consensually perform the RA Work if there is no agreement signed among the parties, no UAO from the USEPA that divides the work as contemplated in the proposed Consent Decree, and in short, nothing different than the situation over a year ago when they were doing the RA Work without the participation of any other party and were then dragged into this lawsuit by the City of Albion. The City of Albion, of course, had to be sued because it refused to do anything to carry out the UAO.

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Since mid February we have heard the same excuses from the City of Albion about having an interim City Manager, their inability to meet to consider the Consent Decree and the like. In February when we received the "final" version of the Consent Decree, we were told that the City could not meet to vote until March 1. Now March 1 has come and gone, and we are told that the City cannot meet until March 15. Even now there is no assurance that the Consent Decree is likely to be approved.

Since September's settlement conference we have had a deal in principle. Cooper and Corning would install the cap and basically do the construction while Decker and the City would do the operation and maintenance. A simple concept, yet here we are nearly 6 months later with Cooper and Corning getting the squeeze to start work with no Consent Decree in place. That is unacceptable. If the City of Albion or Decker do not want to go along with the deal they agreed to in front of the Magistrate in September, so be it. Let everybody know now so that arrangements can be made that will allow Cooper and Corning to carry out the RA Work as planned in full settlement of its obligations and with full protection.

On the second point, we have the signed pages to the Consent Decree in hand. At this point Cooper and Corning plan to start going forward with the RA Work as defined in the Consent Decree. I have been instructed, however, to hold these signature pages pending the outcome of Decker's Board of Directors meeting and the City of Albion's vote.

That brings me to the third point. The EPA must take action so that the work at the Site can be completed. On March 15, 1999, Cooper and Corning will have to start implementing the RA Work as contemplated by the proposed Consent Decree and the related RA Settling Defendants Construction Schedule. Otherwise there is a risk that the RA Work cannot be completed by the fall of 1999. If there is no signed agreement on that date, however, Cooper and Corning cannot wait any longer for the City of Albion or others to finalize the deal as set forth in the Consent Decree. Accordingly, the only viable way to go forward is for the EPA to (1) amend the UAO to require Cooper and Corning to do the RA Work only and Decker and the City to do the O&M Work as defined in and contemplated by the Consent Decree, and (2) quickly cut a separate deal with whomever wants to enter into the Consent Decree by simply cutting the existing draft to exclude recalcitrants. Cooper and Corning of course reserve the right to invoke the Court's assistance or take whatever other action is necessary to ensure that the RA Work gets done and to make certain that the companies' interests are fully protected.

Sincerely,

Melvin G. Moseley, Jr.

MGM/dlp

cc: Via Facsimile & U.S. Mail  
Frank Biros  
Charles Denton  
Michael L. Caldwell  
Philip Moilanen

U.S. ENVIRONMENTAL  
PROTECTION AGENCY

MAR 09 1999

OFFICE OF REGIONAL  
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